



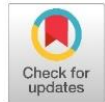
Efforts to Enforce Criminal Laws in the Forestry Sector Against Cases of Destruction of Customary Forests

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Abstract

Introduction: Forests are natural resources that provide great benefits for human welfare, both tangible benefits that are felt directly, and intangible benefits that are felt indirectly.

Purposes of the Research: Reviewing and discussing Analyzing and discussing efforts to enforce criminal law in the forestry sector in the case of destruction of customary forests in the State of Sabuai.

Methods of the Research: Descriptive analytical research using a normative juridical approach is formulated in the results of literature research and the obtained legal materials will be analyzed and studied in a structured research system so that the results will draw conclusions and be equipped with suggestions.

Results of the Research: Indigenous peoples are very dependent on the forest, because the forest is a gift from their ancestors that must be preserved which is called the customary forest. Customary forests are forests that are in the territory of customary law communities. The definition of customary forest refers to the status of the forest area. Indigenous peoples have authority over forest areas but within the framework of state ownership. Therefore, customary law communities have customary rights over the land they occupy and own is in a forest area. In 2018 CV Sumber Berkat Makmur was designated as the holder of a Location Permit for Nutmeg Plantation Business Needs on behalf of CV Sumber Berkat Makmur located in Sabuai Village, Siwalalat District, Eastern Seram Regency. Based on the Decree, a recommendation from the Governor of Maluku was issued Number: 528/64 of 2018 dated February 1, 2018 concerning the Granting of a Location Permit for Nutmeg Plantation Business Needs on behalf of CV Sumber Berkat Makmur which is located in Sabuai Village, Siwalalat District, Eastern Seram Regency which on the basis of The Decree was issued by the Governor of Maluku Recommendation Number: 552-43 of 2018 concerning Land Suitability with the Macro Plan for Plantation Development of the Maluku Province to CV Sumber Berkat Makmur. Efforts to enforce criminal acts in the field of legal forestry against cases of destruction of customary forests in Sabuai Village, including efforts to instill customary law values in the community, optimize and prioritize criminal law enforcement against destruction of customary forests in Sabuai village, increase public awareness not to participate in regarding the destruction of customary forests in Subai Village, holding socialization related to legal rules relating to customary forests, as well as their legal consequences or consequences, and the need to establish a supervisory body for customary forests in Sabuai Village.

1. Pendahuluan

So significant was the forest as a source of livelihood for the Indonesian people at that time, so that in the process of utilizing available forest resources, several rules or utilization systems were made which were regulated in local customary law. Factually, the regulatory system is usually in the form of dividing several areas or zones, including utilization zones and protection zones. This is intended so that the available forest resources can be sustainable and can be utilized by their children and grandchildren.¹ Sustainable and global forest management must accommodate the dynamics of the aspirations of indigenous peoples, and culture, as well as community values that are based on national legal norms and rules².

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. This provision confirms two things, namely:³

- 1) Power to the State to control the earth and water and the natural resources contained therein, so that the State has the right to control. This right is a right that functions in a series of rights to control natural resources in Indonesia.
- 2) Liberating and obliging the State to use existing natural resources for the greatest prosperity of the people. The greatest understanding of the prosperity of the people shows us that it is the people who must receive the benefits of prosperity from natural resources in Indonesia.

The relationship between the State and natural resources as stated in Article 33 paragraphs (2) and (3) of the 1945 Constitution according to the Constitutional Court is reduced to five functions, namely: regulation (*regelendaad*), management (*beheersdaad*), policy (*beleid*), management action (*bestuursdaad*), and supervision (*toezichthoudensdaad*).⁴

In 2018 CV Sumber Berkat Makmur was designated as the holder of a Location Permit for Nutmeg Plantation Business Needs on behalf of CV Sumber Berkat Makmur located in Sabuai Village, Siwalalat District, Eastern Seram Regency. Based on the Decree, a recommendation from the Governor of Maluku was issued Number: 528/64 of 2018 dated February 1, 2018 concerning the Granting of a Location Permit for Nutmeg Plantation Business Needs on behalf of CV Sumber Berkat Makmur which is located in Sabuai Village, Siwalalat District, Eastern Seram Regency which on the basis of The Decree issued by the Governor of Maluku Recommendation Number: 552-43 of 2018 concerning Land Suitability with the Macro Plan of Plantation Development of Maluku Province to CV Sumber Berkat Makmur.⁵

¹ Abdul Rahman Nur, *Hukum Kehutanan* (Bogor: Guepedia, 2018), h. 7.

² La Ode Angga et al., "Effectiveness of Law Number 41 the Year 1999 in the Case of Illegal Logging in Maluku Province," *Cepalo* 3, no. 2 (2019): 141-52, <https://doi.org/10.25041/cepalo.v3no2.1848>.

³ Ahmad Ubbe, *Penelitian Hukum Tentang Peran Masyarakat Hukum Adat Dalam Penanggulangan Pembalakan Liar* (Jakarta: Puslitbang Hukum Nasional BPHN, 2013), h. 1.

⁴*Ibid.*

⁵*Ibid*

Furthermore, from the recommendation from the Governor of Maluku, the Decree of the Regent of East Seram Number: 151 of 2018 dated March 8, 2018 concerning the Granting of a Cultivation Plantation Business Permit (IUP-B) was issued to CV. Sumber Berkas Makmur in Sabuai Village, Siwalalat District, Eastern Seram Regency with an area of 1,183 Ha. Based on the Decree of the Minister of Forestry Number: SK.854/Menhut-II/2014 dated September 29, 2014 concerning the Map of Forest Areas and Marine Conservation of Maluku Province, the IPK area of CV.Sumber Berkas Makmur is outside the forest area with the function of Other Use Areas (APL) which has been assigned a designation permit which geographically the IPK area of CV Sumber Berkas Makmur is located between 129056'59,282"BT-3019'30,163"LS to 129059'15,047"BT-3019'16,893"LS, with an area for Timber Utilization Permit (IPK) covering an area of 1,079 Ha (hectare) with an area of 1.183 Ha (hectare) Plantation Business Permit (IUP).

Based on the granting of a Plantation Business Permit and CV Sumber Berkas Makmur, a Timber Utilization Permit (IPK) was obtained by the Maluku Provincial Forestry Service which was granted in 2 (two) stages. /BPPHLHK.5/TU/02/2020 dated February 27, 2020. The Operations Team of the Ministry of Forestry, the Center for Environmental and Forestry Security and Law Enforcement in the Maluku region, came down in Sabuai Village, Siwalalat District, Eastern Seram Regency and when they arrived at Camp Tunsu, they found 25 (twenty) five logs of various sizes and types. Then the team assigned Serepikoru and Marthen Bunggu to the logging location when checking the logging area, it was found that there was access to a logging road and found that there had been felling of trees on the left and right sides of the road, which was seen by the presence of stumps from felled trees and then took the coordinates with using the global position system (GPS).

2. Metode Penelitian

The type of research used in this research is the type of normative legal research. Normative legal research is legal research carried out by researching library materials or data sekunder.⁶ In legal research, there are several approaches, in which researchers will obtain information from various aspects regarding the legal issues being studied. The research used is descriptive-analytical. Analytical descriptive research, which is meant by using a normative juridical approach is formulated with the results of library research, it is possible to be able to describe various findings both through empirical research and library research and the data obtained will be analyzed and studied in a structured writing system, so that with the results The description will draw conclusions and be equipped with suggestions.

3. Hasil Dan Pembahasan

3.1 Sabuai Chronology of Cases of Destruction of Customary Forests in Sabuai Village

Indigenous peoples have high wisdom, an amazing depth of life knowledge and a strong socio-economic system. However, in reality, there is a conflict between the culture of indigenous peoples who are based on the balance of nature and a production system that

⁶ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta : Raja Grafindo Persada (Jakarta: Rajawali Pers, 2015), h. 15.

places more emphasis on subsystem economics (farming, hunting, gathering, gardening, etc.), and government policies that are exploitative to natural resources. The Indonesian economy is developed on a macro basis by prioritizing mining, large-scale plantations, logging and so on as the main sources of national development. The government, the media and the private sector build stereotypes about the culture of indigenous peoples as backward, ancient, uncivilized, primitive and various other negative labels. Customary law community is a general term used in Indonesia to refer to the indigenous people who inhabit the territory of Indonesia. In law and theory, it is formally known as the Customary Law Community, but in recent developments, indigenous peoples refuse to be grouped only in a legal perspective, but need to be seen in all aspects and levels of life.⁷

Protection and preservation of the marine environment, so that it is not only the responsibility of the government, but also the responsibility of all levels of society, including the Indigenous Peoples⁸. Indigenous peoples are very dependent on the forest, because the forest is a gift from their ancestors that must be preserved which is called the customary forest. Customary forests are forests that are in the territory of customary law communities. The definition of customary forest refers to the status of the forest area.

Indigenous peoples have authority over forest areas but within the framework of state ownership. Therefore, customary law communities have customary rights over the land they occupy and own in the forest area. However, these rights are fully owned by indigenous peoples, and can be used by the state at any time in the name of the state's interests.

Ulayat rights are the highest rights to land owned by a legal alliance to ensure orderly utilization or utilization of land. The community has the right to control the land where its implementation is regulated by the tribal chief or village head. In a normative definition, Article 1 of the Regulation of the Minister of Agrarian Affairs Number 5 of 1999 explains that ulayat rights are the authority which according to customary law belongs to customary law communities owned by certain customary law communities which are the environment of their citizens to take advantage of natural resources, including land, in the area, for survival and life. Based on this, ulayat rights are a logical consequence of the recognition of the rights of indigenous peoples.⁹

In the context of forest ownership by customary law communities as regulated in the Forestry Law, the use of forest by customary law communities is carried out with the aim of creating people's prosperity. This is explained in Article 3 of Law Number 41 of 1999 concerning Forestry. Forests that are occupied or are part of the territory of customary law communities can also be utilized by the state with the aim of creating prosperity for the people at large. This is based on Article 1 paragraph (6) of the Forestry Law which states

⁷ Yusuf Salamat, "Pengaturan Mengenai Hak Atas Tanah Masyarakat Hukum Adat (Studi Kasus Pengakuan Terhadap Hak Atas Tanah Masyarakat Hukum Adat Dayak Di Kalimantan Tengah)," *Jurnal Legilasi Indonesia* 13, no. 04 (2016): 411–20.

⁸ Muchtar Anshary Hamid Labetubun, La Ode Angga, and Sabri Fataruba, "Hawear As Customary Law In Protecting And Conserving Marine Resources In Southeast Maluku Regency," *Technium Social Sciences Journal* 25 (2021): 146–55, <https://techniumscience.com/index.php/socialsciences/article/view/4874>.

⁹ G. Kertasapoetra, *Hukum Tanah: Jaminan Undang-Undang Pokok Agraria Bagi Keberhasilan Pendayagunaan Tanah* (Jakarta: Rineka Cipta, 1991), h. 88.

that: "Customary forest is a (State) forest located within the territory of customary law communities".¹⁰The phrase control by the 'state' becomes a dilemma when faced with the weak position of customary law communities because they have to submit to state power and have to hand over customary forests as customary rights to the state as soon as the state will take advantage of the forest area. The fact is that during the enactment of this Forestry Law, it has been used as a tool by the State to take over the rights of customary law community units over their customary forest areas to then be made into State forests, which in turn are given and/or handed over to the owners of capital through the name of the State. various licensing schemes to be exploited without paying attention to the rights and local wisdom of the customary law community unit, this has led to conflicts between the customary law community unit and the entrepreneurs who use their customary forest. This practice occurs in most of the territory of the Republic of Indonesia, this ultimately leads to a current of rejection of the enactment of the Forestry Law.

In general, the Constitutional Court agrees that customary forests are no longer part of state forests, but are part of the territory of customary law communities. The decision of the Constitutional Court is a turning point for the restoration of the rights of indigenous peoples to their customary forest areas. Previously this forest area was unilaterally designated by the Government as a State forest through the Forestry Law. Imanuel Quedarusman Alias Yongki on days and dates that are no longer remembered in 2019 until March 2020 at Sabuai Village, Siwalalat District, Eastern Seram Regency or at least in a place that is still included in the jurisdiction of the Hunimoa Plain District Court intentionally ordering, organize, or promote illegal logging and/or illegal use of forest areas. In 2018 CV Sumber Berkat Makmur was designated as the holder of a Location Permit for Nutmeg Plantation Business Needs on behalf of CV Sumber Berkat Makmur located in Sabuai Village, Siwalalat District, Eastern Seram Regency. Based on the Decree, a recommendation from the Governor of Maluku was issued Number: 528/64 of 2018 dated February 1, 2018 concerning the Granting of a Location Permit for Nutmeg Plantation Business Needs on behalf of CV Sumber Berkat Makmur which is located in Sabuai Village, Siwalalat District, Eastern Seram Regency which on the basis of The Decree issued by the Governor of Maluku Recommendation Number: 552-43 of 2018 concerning Land Suitability with the Macro Plan of Plantation Development of Maluku Province to CV Sumber Berkat Makmur.

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¹⁰*Ibid*

(IUP) area of 1,183 Ha (hectare) of which CV Sumber Berkat Makmur's IPK area limits are as follows:

- 1) To the north it is bordered by Conversion Production Forest (HPK)
- 2) In the east it is bordered by Conversion Production Forest (HPK)
- 3) In the west it is bordered by Conversion Production Forest (HPK)
- 4) To the south, it is bordered by the APL area (Petuanan Sabuai Village)

3.2 Law Enforcement Efforts on Handling Cases of Destruction of Customary Forests in Sabuai Village

In the context of the Covid-19 pandemic, the state's obligations include ensuring that preventive measures, equipment, services and information are available and accessible to everyone. Within the right to health, health equipment, facilities and services must be available in sufficient quantities; accessible to all without discrimination; respect medical ethics; as well as scientifically and medically appropriate and of good quality. Health equipment and services must be accessible to all, especially the most vulnerable or marginalized groups in society; within safe physical reach for all communities without exception; and affordable for all while taking into account special needs due to gender, age, disability. This right also includes accessibility of health-related information.¹¹

Collective management rights of customary law communities over forest area land are management based on the innate rights of customary law communities from their original composition and origin rights. However, in Law 41 of 1999 on forestry it is different. Collective rights of customary law communities in the form of customary forests are perceived as part of state forests. The legal consequence of this paradigm of forestry law is that the legal status attached to the management rights of customary law communities is part of state power, which at any time can be taken over and managed by the state for the benefit of the state. With this, there is no special treatment for the rights of origin of indigenous peoples over the control and management of state land. The existence of customary law communities in forest management has specifically been stated in Article 67 paragraphs 1, 2 and 3. Starting from this, the presence of this Article has caused a dilemma for indigenous peoples. At least, there are 3 problems faced by customary law communities, namely 1) recognition of the existence of customary law communities, 2) management based on law, and 3) requiring the confirmation from the state of customary law community forest areas.¹²

Law enforcement is aimed at improving order and legal certainty in society. This is done, among others, by controlling the functions, duties and authorities of the institutions tasked with enforcing the law according to the proportions of their respective scopes, and

¹¹ Margie Gladis Sopacua et al., "The Effectiveness of Parole for Prisoners during the Covid-19 Pandemic," *Journal of Advances in Education and Philosophy* 4, no. 11 (2020): 478-82, <https://doi.org/10.36348/jaep.2020.v04i11.008>.

¹² Mawardi, "Mawardi, Implikasi Hak Kesatuan Masyarakat Hukum Adat Dalam Pengelolaan Tanah Kawasan Hutan Di Kabupaten Lombok Utara Implications Of The Right For Unity Of Customary Law Communities In The Management Of Forest Area Land In The Regency Of North Lombok (St," *Jurnal IUS Kajian Hukum Dan Keadilan* 1, no. 3 (2013): 553-75.

based on a good cooperation system that supports the goals to be achieved.¹³ Basically forestry crimes, in general related to elements of general criminal acts in the Criminal Code, can be grouped into several forms of crime in general, namely:¹⁴

- a) Vandalism (Article 406 to Article 412)
- b) Article 362 of the Criminal Code)
- c) Counterfeiting (Article 261-276 of the Criminal Code)
- d) Embezzlement (Article 372 - 377KUHP).

Illegal logging is basically a term that is never mentioned in any legislation. Usually this term refers to a series of criminal acts contained in Article 50 of Law No. 19 of 2004, ranging from illegal logging, control, transportation, to the sale of the timber. However, Article 50 does not state the crime as a series of crimes. Illegal logging crime separately regulated as the transportation and sale of illegal timber is also regulated separately. Formulation of regulated illegal logging crime in Article 50 and the criminal sanctions in Article 78 of Law Number 41 of 1999 is one of the efforts to protect forests in the context of maintaining forest functions in a sustainable manner.¹⁵

This problem regarding customary forests has created injustice for indigenous peoples. Regarding the theory of justice, one of the concepts taught by Aristotle, namely distributive justice requires that everyone should get what is their right or share; *sum cuique tribuere (to reach his own)*.¹⁶ In this context, the government must be able to wisely formulate various regulations in accordance with the rights of the community and of course also guarantee the implementation process. When the government succeeds in fulfilling the rights of the people as it should, then justice is created. Furthermore, John Rawls argues that justice is the main virtue of the presence of social institutions. However, according to him, goodness for the whole community cannot override or interfere with the sense of justice of everyone who has obtained a sense of justice, especially the weak.¹⁷

Law Number 41 of 1999 mentioned above, it can be found elements that can be used as the basis of criminal law against the crime of illegal logging, namely as follows:¹⁸

- 1) Damage forest protection infrastructure and facilities
- 2) Activities that are outside of the licensing provisions that damage the forest
- 3) Violating the boundaries of river banks, ravines, and beaches as stipulated by law
- 4) Cutting down trees without permission
- 5) Receiving, buying, or selling, accepting exchange, accepting deposit, storing, or possessing forest products that are known or reasonably suspected to be illegal forest products
- 6) Transporting, controlling or owning forest products without SKSHH

¹³ Sanyoto, "Penegakan Hukum Di Indonesia," *Jurnal Dinamika Hukum* 8, no. 3 (2008): 199-204.

¹⁴ *Ibid*

¹⁵ Fachruddin Majeri Mangunwijaya, *Hidup Harmonis Dengan Alam* (Jakarta: Yayasan Obor Indonesia, 2017), h. 12.

¹⁶ Suprima Ollifca Pratasi, "Implementasi Teori Keadilan Komutatif Terhadap Pelaku Pemerksaan Menurut Pasal 285 KUHP," *Lex Et Societatis* 2, no. 5 (2014): 51-61.

¹⁷ Pan Mohamad Faiz, "Teori Keadilan John Rawls," *Jurnal Konstitusi* 6, no. 1 (2009): 135-49.

¹⁸ *Ibid*

- 7) Bringing heavy equipment and other tools for managing forest products without a permit.

The term "forest damage" contained in the prevailing laws and regulations in the forestry sector is interpreted to mean that forest destruction has a dualistic meaning, namely: first, forest damage that has a positive impact and obtains approval from the government cannot be categorized as an unlawful act. Second, damage that has a negative (harmful) impact is a real action against the law and against policy or without government approval in the form of a permit.¹⁹

Based on the case of destruction of customary forests in Sabuai Village which has been described in the previous discussion, the efforts to enforce criminal acts in the field of legal forestry against cases of destruction of customary forests in Sabuai Village, include the following;

- 1) Efforts to instill customary law values in society
- 2) Optimizing and prioritizing criminal law enforcement against the destruction of customary forests in the village of sabuai
- 3) Increase public awareness not to participate in the destruction of customary forests in Subai Village
- 4) Conduct socialization related to legal rules related to customary forests, as well as their legal consequences or consequences.
- 5) The need to establish a supervisory body for customary forests in Sabuai Village.

4. Kesimpulan

The existence of customary law communities along with their rights as legal communities is very important and needs to be respected, respected, and recognized as long as they are still alive and in accordance with community development, national interests, and the principles of the Unitary State of the Republic of Indonesia. efforts to enforce criminal acts in the field of legal forestry against cases of destruction of customary forests in Sabuai Village, including the following; 1). Efforts to instill customary law values in society; 2). Optimizing and prioritizing criminal law enforcement against the destruction of customary forests in the village of sabuai; 3). Increase public awareness not to participate in the destruction of customary forests in Subai Village; 4). Conduct socialization related to legal rules related to customary forests, as well as their legal consequences or consequences; 5). The need to establish a supervisory body for customary forests in Sabuai Village. Thus, special attention from the government is needed for the customary law community of Subai Village and also better coordination between the authorities in terms of criminal acts in the field of legal forestry against cases of destruction of customary forests in Sabuai Village.

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